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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JAN 11 1984

OFFICE OF  
AIR AND RADIATION

MEMORANDUM

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SUBJECT: Applicability of PSD Increments to  
Building Rooftops  
  
FROM: Joseph A. Cannon  
Assistant Administrator  
for Air and Radiation  
  
TO: Charles R. Jeter  
Regional Administrator, Region IV

The following is in response to your letter of November 10, 1983, concerning issues which you felt required review for national consistency relating to a new source review for an Alabama Power facility in downtown Birmingham, Alabama.

On September 29, 1983, your office informed the State of Alabama that a new source's compliance with the PSD increments must be measured on the tops of buildings, as well as at ground level. Since then we have discussed the question extensively among ourselves and with representatives of the State of Alabama and the company. For the reasons that follow, I do not believe we are in a position to definitively assert that PSD increments apply to rooftops without further information as to the consequences for the PSD system as a whole. Accordingly, I recommend that we inform Alabama that we do not now require that compliance with PSD increments be measured at the tops of buildings. A State may, of course, adopt such an approach if it so desires.

Between 1970 and 1983, it appears to have been general EPA practice to determine compliance with both NAAQS and PSD increments at ground level, not at roof level. On March 18, 1983, however, Kathleen Bennett, in a letter to the State of New York, determined that the "national ambient air quality standards are designed to protect the public health and welfare and apply to all ambient air which does include the rooftops and balconies of buildings accessible by the public."

I believe this conclusion was correct. Apartment balconies, rooftop restaurants, and the like present a potential for human exposure that the primary ambient air quality standards should be interpreted to address.

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Given this conclusion, one could argue, based on the text of the relevant regulations and the Clean Air Act, that the PSD increments apply wherever the NAAQS apply, and that both must apply throughout the "ambient air." However, the PSD system, unlike the NAAQS system, does not aim at achieving one single goal. Rather it represents a balance struck first by Congress between a given level of protection against degradation and a given potential for economic growth. It appears that the calculations on which that balancing judgment was based all assumed that PSD increments would be measured at ground level.

A number of state officials who are now administering PSD have argued

to me that by measuring PSD increments on rooftops as well as at ground level, EPA would make the PSD system appreciably more stringent than Congress contemplated. Although major urban areas are all Class II areas, this approach, it is argued, could result in constraints on growth comparable to those that apply in Class I areas - national parks and wilderness areas. Such an outcome would not, it is argued, be consistent with Congressional intent.

In these circumstances, I think that preserving the status quo is particularly advisable because:

\* It is likely that Alabama did not contemplate adopting a "rooftops" approach to PSD when it took over the PSD program. That expectation, though not decisive, does provide some reason not to change the situation without formal rulemaking.

\* The consequences of an erroneous decision to consider increment consumption on rooftops will be more severe than those of an erroneous decision not to consider them. The adoption of such an approach will present at least a procedural, and, probably a substantive obstacle to development in urban areas, while in its absence air quality will still be protected by the NAAQS, by the PSD increments applied at ground level, and by the other aspects of PSD review such as Best Available Control Technology.

Therefore, I have concluded that since the State of Alabama has authority under an approved implementation plan for administering the PSD program within Alabama, it is their responsibility to apply this principle of maintaining the status quo to this case, taking all the relevant facts into account.

Please advise the State of Alabama of the Agency's position on these points as our response to the issues which they raised in meetings with both of us.

cc: A. Alm  
P. Angell  
T. Devine  
G. Emison  
W. Pederson  
P. Wyckoff  
S. Meiburg